

**PATENT**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No.: 10/722,021  
Filing Date: November 25, 2003  
Confirmation No.: 6538  
Applicant: Mark A. W. Stewart  
Group Art Unit: 2616  
Examiner: J.W. Loo  
Title: CONNECTION CONTROLLER  
Attorney Docket: 1400B-000039/US

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

Applicant requests a Pre-Appeal Brief Conference.

**STATUS OF CLAIMS**

Claims 1-21 are pending and Claim 14 was previously withdrawn. Claims 1-10, 13, 15-17 and 21 are rejected 35 U.S.C. 103(a) as being unpatentable over Foster et al. (US 2002/0181395 A1) in view of Dell et al. (US 2002/0085578 A1) and further in view of Karp (US 5,469,154). Claims 11-12 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster et al. (US 2002/0181395 A1) in view of Dell et al.

(US 2002/0085578 A1) and Karp (US 5,469,154) and further in view of Brahmaroutu (US 2003/0033427 A1).

### **ARGUMENT**

Applicant contends that the art cited by the Examiner fails to teach or suggest "the packing algorithm configured to .... receive the traffic pattern request from each of the plurality of packet sources in a predetermined time window; and compute an actual traffic pattern for the packet based on the received network topology data and all received traffic pattern requests." The Applicant traverses the Examiner's assertion that one of ordinary skill in the art would be motivated to modify Foster based on the features of Dell to arrive with the above features. Applicant refers to the Amendment After Final submitted on December 16, 2008, page 11, first paragraph, for the discussion regarding Foster.

Even if one of ordinary skill in the art can be motivated to combine Foster and Dell, one can at best modify the VI NIC of Foster to employ a bit arbitrator based on the teaching of Dell. One of ordinary skill in the art would not be motivated to and also cannot modify Foster based on the teaching of Dell to arrive at a technique that determines the transmission path based on all indications for communications received. This is because one of ordinary skill in the art at best can learn a bidding mechanism that can be utilized to pick a winning node from any requesting nodes. Nothing in Dell can teach one to consider determining a transmission path based on all the received indications. Applicant refers to the Amendment After Final filed on December 16, 2008, page 12 for this discussion.

Further, Claim 1, requires that “the network is able to operate as a strictly non-interfering network”. Applicant recognizes that the Examiner acknowledges the Foster et al. reference fail to teach the above limitations but asserts that one of ordinary skill in the art would be motivated to modify Foster and Dell based on the teachings of Karp to arrive at the above limitations. However, Applicant has studied Karp carefully and submits that Karp at best appears to disclose a non-blocking network. Karp fails to teach or suggest operating a strictly non-interfering network. For a detailed discussion of the distinctions, Applicant refers to the Amendment After Final filed on December 16, 2008, pages 13-15. Applicant particularly refers to the Amendment After Final of December 16, 2008, page 15 regarding the discussion of Dell. Applicant respectfully submits that the discussion of Dell makes it clear that there is a distinction between a non-blocking network and a strictly non-interfering network and that Dell in combination with Foster and Karp fails to teach or suggest a strictly non-interfering network.

Applicant further refers to the Amendment After Final filed December 16, 2008, page 15, second full paragraph, where Applicant discusses Foster and Karp and how utilizing the technique of Karp one of ordinary skill in the art must change the network in Foster essentially as to defeat the principles of operation of Foster.

In view of the foregoing, Applicant respectfully submits that Claims 1, 8, and 13 define over the art cited by the Examiner. As Claims 2-7, 9-12 and 14-21 depend from respective independent Claims 1, 8 and 13, Applicant respectfully submits that these claims also define over the art cited by the Examiner for the same reasons.

Accordingly, Applicant respectfully submits that the presently pending claims are in condition for allowance.

Respectfully submitted,

Dated: January 15, 2009

By: /Joseph M. Lafata/  
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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>1400B-000039/US</b>	
		Application Number <b>10/722,021-Conf. #6538</b>	Filed <b>November 25, 2003</b>
		First Named Inventor <b>Mark A. W. Stewart</b>	
		Art Unit <b>2616</b>	Examiner <b>J. W. Loo</b>
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 60%;"> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>37,166</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> </div> <div style="width: 35%; border-top: 1px solid black; padding-top: 5px;"> <p><u>/Joseph M. Lafata/</u> Signature</p> <p><u>Joseph M. Lafata</u> Typed or printed name</p> <p><u>(248) 641-1223</u> Telephone number</p> <p>_____ Date</p> </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<input type="checkbox"/> *Total of <u>1</u> forms are submitted.			